

**SCOTTISH
SALMON WATCH**



WELFARE

Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

23 April 2020

Dear Sir/Madam,

**Appeal re. APHA's FOI refusal via ATIC1836
- Photographs of farmed salmon & salmon farms**

Please consider this a formal appeal against the [FOI refusal by the Animal & Plant Health Agency \(APHA\) via ATIC1836 on 10 March 2020](#).

As background, Scottish Salmon Watch filed a FOI request on 16 September 2019; APHA replied on 11 October 2019 and Scottish Salmon Watch requested a review on 25 October 2019. APHA's review reply was over 3 months late and refused to disclose the information requested (details via [APHA FOI Dossier](#)).

Scottish Salmon Watch's [FOI request dated 16 September 2019](#) asked for information since 1 January 2018 in relation to photos of farmed salmon and salmon farms:

From: Don Staniford <salmonfarmingkills@gmail.com>

Date: Mon, Sep 16, 2019 at 8:18 PM

Subject: FOI re. photos of farmed salmon & salmon farms since 1 January 2018

To: Enquiries APHA <enquiries@apha.gsi.gov.uk>

Please provide information since 1 January 2018 in relation to photos of farmed salmon and salmon farms.

Please include photos obtained via APHA inspections, unannounced site visits, email correspondence with salmon farming companies, whistleblowers & vets and other sources.

Please include correspondence, emails, letters, press briefings and other information relating to photos including the non-disclosure and non-publication of photos.

Please include any legal correspondence with lawyers acting for salmon farming companies.

APHA's [FOI reply dated 11 October 2019](#) included:

Public Interest Test

APHA recognises that there is a general presumption in favour of openness and transparency concerning our work, and providing the general public with the right to request access to information held by public authorities.

However, APHA's relationship with Salmon Farmers and farms is based on trust. Releasing this information could prejudice the commercial interests of any such establishments and mislead the general public, who would base their opinions on such information even if any potential problems had been rectified. This could lead to financial losses, whether through a loss of trust and custom or through the cost in time, or of repairing reputational damage.

Furthermore, this would result in breach of confidentiality between APHA and its customers and could potentially lead to an adverse working relationship and interfere with the relevant Public Authority carrying out its statutory duties.

APHA have concluded that, the commercial interest of our customers outweighs that of the public right to know.

Scottish Salmon Watch's [FOI review request to APHA dated 25 October 2019](#) included:

It is shocking that APHA maintains that "the commercial interests of our customers outweighs that of the public right to know".

Surely customers of supermarkets buying farmed salmon have a right to know if they're sourced from disease-ridden farms? Surely customers of restaurants have a right to know which businesses are guilty of welfare abuse?

If APHA's sole duty is to salmon farmers and protecting this disease-ridden industry from public scrutiny then it is surely a Government agency operating against the public interest and outwith FOIA laws. Scottish Salmon Watch looks forward to debating these issues further and making a formal submission and appeal to the Information Commissioner.

Over three months later, [APHA finally replied on 10 March 2020](#) explaining:

With the photographs obtained from third parties, we have included all correspondence held in our response to you in your later request. This is reference ATIC1896 in which you requested all information relating to inspections. These inspections were carried out in response to welfare allegations/complaints from third parties, which in cases sometimes included photographs. Therefore because this has already been provided to you, it will not be issued again.

Please note that further details relating to this issue including a [review request re. ATIC1988 filed with APHA](#) are published today via: [Censored: Welfare Abuse on Salmon Farms](#).

Since these FOI requests (ATIC1836 and ATIC1896) are similar in scope you may wish to wait to consider this appeal until APHA has replied to [Scottish Salmon Watch's FOI review request of ATIC1896 which was also filed today](#) and the likely appeal by Scottish Salmon Watch.

APHA's [letter dated 10 March 2020 via ATIC1836](#) (to confuse the situation APHA also [replied on 10 March 2020 via ATIC1896](#)) cited 'Section 31 - Law Enforcement' including:

Photographs held, as received from third parties will not be released under the following exemptions of the FOIA:

Section 31 - Law Enforcement

Section 31(1)(g) states:

31 – (1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice –
(g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2)

This is read in conjunction with the following sub sections:

31 – (2)(a) the purpose of ascertaining whether any person has failed to comply with the law,

The photographs have been retained as part of a third party allegation of poor fish farm welfare. The photos are retained as part of the allegation to be investigated. The source of the investigation is also withheld. Investigations into allegations of poor welfare, particularly those protected by section 31(1)(g) via 31(2), can be aided by either individuals, or organisations providing information to the APHA. Such information is either volunteered by a confidential source, for example someone who has provided information on the understanding that they will not be identified and the information and identity of its source will be protected by section 30(2). However, even where the provider of the information is not a confidential source, APHA consider there is still a public interest in not releasing the details of those providing information so as to not discourage others from providing information on a voluntary basis. This includes photographs.

Public Interest Test

The exemption in section 31 is subject to a Public Interest Test to ensure it is being appropriately applied.

We recognise that there is a public interest in disclosure of the photographs in order to increase transparency and aid well-informed debates concerning our work on investigating farm welfare complaints. However, the public interest in withholding the information arises from the fact that at the time of receiving the photographs no inspections had been carried out to confirm or deny allegations and APHA cannot confirm the origin of any photographs received.

Release of any related investigatory information will disrupt our processes in investigating allegations and likely to prejudice our ability to liaise with Local Authorities and/or Fish Health Inspectorates to undertake their functions.

Therefore we have concluded the public interest in withholding photographs received from third parties will be withheld.

Scottish Salmon Watch strongly objects to the non-disclosure of photos held by APHA and maintains that APHA has misapplied the 'Public Interest Test'. APHA's argument that the disclosure of photographs by third parties "will disrupt...processes in investigating allegation and likely prejudice and our ability to liaise with Local Authorities and/or Fish Health Inspectorates to undertake their functions" simply does not hold water.

In the first stance, the Scottish Government's Fish Health [Inspectorate routinely publishes damning photos of diseased farmed salmon via 'Case Information' which is updated online on a monthly basis](#) since a [landmark FOI ruling in June 2018](#) (despite legal threats from salmon farming companies).

Photographic evidence and 'case Information' are now routinely reported on by the media including [Private Eye](#) and [The Ferret](#), NGOs such as [PETA](#) and [OneKind](#) as well as via [press releases](#), [blogs](#) and [Tweets](#). Scottish Salmon Watch [published a dossier of photographs](#) (mostly sourced via FOI from the Scottish Government or published by the Scottish Government) in February 2020.



Moreover, the Scottish Government [disclosed a photo provided by a third party in a FOI reply to Scottish Salmon Watch in October 2019.](#)



Photo: Escaping farmed salmon from a well boat in Orkney

The Ferret [reported](#) (24 October 2019):



The Scottish Government defied concerted pleas by salmon farming multinationals to keep photos of diseased and damaged fish secret, according to internal emails.

Instead, ministers decided to regularly publish graphic photos from official fish health inspections of caged salmon farms in line with their duties under freedom of information law.

Secondly, one of the third parties referred to by APHA openly shared photographs and video footage with Scottish Salmon Watch earlier this week. As Scottish Salmon Watch explained in our [FOI review response to APHA via ATIC1896 filed today](#) (23 April 2020):

"Please note that anonymous tip off in relation to Mowi's aptly named Muck salmon farm was from Corin Smith who this week consented for the video footage, photos and email so heavily redacted by APHA to be publicly disclosed. Here's a copy of the heavily redacted email disclosed via ATIC1896 (01 Appendix MCFF01).

From: [REDACTED]
Sent: 30 August 2019 13:18
Subject: Muck MCFF Disclosure with regards Fish Health and Welfare

To whom it may concern,

I am making this disclosure on behalf of a third party who wishes to remain anonymous, concerning ongoing issues of fish welfare and health on Muck salmon farm, as well as [REDACTED]. I make no comment personally as to the veracity of the claims.

The factual information along with images and video I am sharing have been given to me by a third party [REDACTED]. Freedom of Information requests may be made in the future to confirm this has not taken place.

In summary the following has been alleged [REDACTED]

[REDACTED]

- Evidence to support the claim has been presented [REDACTED] there are images [REDACTED]

[REDACTED]

- [REDACTED]

- In terms of fish welfare an individual sent me a message which said [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

I trust you will take the appropriate actions.

yours sincerely,

[REDACTED]

And here's the unredacted email shared with Scottish Salmon Watch by Corin Smith:

From: corin@wildrisecompany.com <corin@wildrisecompany.com>

Date: Fri, 30 Aug 2019 at 13:17

Subject: Muck MCFF Disclosure with regards Fish Health and Welfare

To:

To whom it may concern,

I am making this disclosure on behalf of a third party who wishes to remain anonymous, concerning ongoing issues of fish welfare and health on Muck salmon farm, as well as potential biomass breaches at the fish farm. I make no comment personally as to the veracity of the claims.

The factual information along with images and video I am sharing have been given to me by a third party connected to the farm and they have asked that I ensure these should not be passed directly to the operator, or quoted directly, as this is likely to comprise the individual's employment. Freedom of Information requests may be made in the future to confirm this has not taken place.

The disclosure could be considered "whistleblowing" as it is my understanding that the disclosures represent a risk of or actual damage to the environment, albeit these are being made indirectly.

In summary the following has been alledged in respect of mortalities:

- There are a very high number of mortalities occurring on Muck MCFF. These may not have been properly or fully declared to Marine Scotland. These have occurred as a result of gill disease and physical damage during sea lice treatment.

- Evidence to support the claim has been presented in the form of AIS data which shows the transportation of morts on vessels specific to this purpose. Further there are images attached (1-6) which show mortalities being handled at Mallaig pier. These images (not all that have been captured) show the vessel "Paul B" lying dockside with over 20 tonnes of morts apparently onboard from a single trip. (Image "2") The AIS data confirms "Paul B" made a direct journey to and from Muck MCFF.

- Further evidence includes a first hand witness account of a large oil slick being present at Muck MCFF as recently as Wednesday this week. This encompassed the entire farm. It is suggested that this oil slick is consistent with very large numbers of mortalities having been present in the cages for up to two weeks. There is video footage of this here (<http://bit.ly/2L6XBCo>). This clip has been edited in order to protect the identity of the individual.

- In terms of fish welfare an individual sent me a message which said *"the fish had a gill problem (can't remember the exact name), and a mess was made of one of the hydro-lice treatments so the fish are in a very bad way. The fish are ten times worse than you seen on tv..."*

The same individual also supplied information regarding biomass levels at the site, which may or may not be consistent with the current licence:

- [laughing crying emoticon] "fish number the now is around 80k some cages have more tonnage up and round 300t"

- "Yeah mate. 1.1m fish left into 12 cages [shocked face emoticon] we can have 3500t on site at a time..we have hit the number so harvest roughly 100-120t out at a time then wait until we grow the site back up to 3500t then harvest again"

I trust you will take the appropriate actions.

yours sincerely,

Corin

--

Corin Smith

Owner / Guide

+44 (0) 7463 576892

5 Attachments



The attached photos ([deemed by APHA's FOI refusal letter via ATIC 1836 dated 10 March 2020 to be commercially damaging and could result in "negative publicity"](#)) include:



Sadly the video footage cited in the complaint to APHA - <http://bit.ly/2L6XBCo> - is set to private.

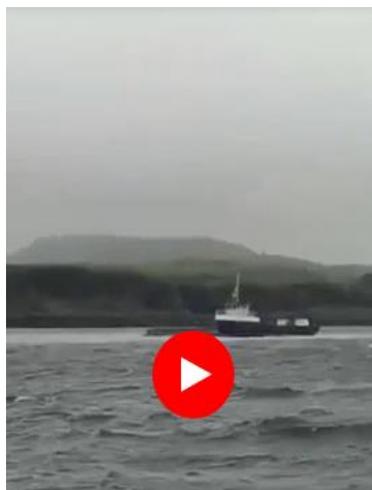
Google Drive

You need permission

Want in? Ask for access, or switch to an account with permission.
[Learn more](#)



However, earlier this week Scottish Salmon Watch obtained a copy of the video footage of the "large oil slick" at Mowi's Muck salmon farm.



Scottish Salmon Watch have now [published the video footage online](#)



APHA's [letter dated 10 March 2020 via ATIC1836](#) also cited 'Section 43 - Commercial Interest' including:

Section 43 – Commercial Interest

The photographs have been provided by third parties. Following considerations into this request, APHA have considered the level of harm and the impact possible disclosure would have and have withheld the photos under Section 43(2) – Prejudice to Commercial Interest.

The third party provided photos are part of allegations made from anonymous (or otherwise) sources. It may be harmful should the photos be released as APHA cannot verify the photos. If released, the photos could cause the farms negative publicity.

Public Interest Test

The exemption in Section 43 is subject to a Public Interest Test to ensure it is being appropriately applied.

The disclosure of the information you have requested has the potential to prejudice the commercial interests of the farm. We believe that in releasing unverified photographs could potentially lead to an adverse working relationship between APHA and the farm interfering with us carrying out our statutory duties. Releasing photos alleged of a particular farm could interfere with the business and running of a farm in completion with its competitors.

Scottish Salmon Watch strongly disagrees with APHA's application of the 'Public Interest Test' and assertion of the rights of companies to blanket confidentiality (as evidenced by APHA's heavy-handed redaction of documents) over and above the public's right to know.

APHA's claim that "releasing photos alleged of a particular farm could interfere with the business and running of a farm in completion with its competitors" is moot in relation to Mowi's Muck salmon farm since the photos and [video footage](#) have already been published.

Moreover, [gruesome photos of Mowi's salmon farms and its competitors](#) have been routinely [published via the Scottish Government's 'Case Information' \(currently up to February 2020\)](#).



The [ugly face of Mowi and other companies](#) is all too clear.



APHA is clearly placing their "working relationship" with salmon farming companies ahead of their statutory priorities with respect to animal welfare and policing the Animal Health & Welfare (Scotland) Act 2006 in particular. Scottish Salmon Watch strongly believes that commercial confidentiality cannot be permitted to thwart transparency and public accountability.

APHA's [letter dated 10 March 2020 via ATIC1836](#) concluded:

Internal Review Decision

The result of this Internal Review is that the response dated 11 October 2019, should not have indicated information was held as requested, by applying exemptions.

It is correct that APHA do not hold any photographs taken during inspections and therefore no correspondence relating to those photos.

APHA confirm we do hold photos received as part of welfare allegations/complaints from third parties. We have explained above and under what exemptions we are withholding these photos.

Section 38 Health and Safety has not been applied in this review. This request relates to photographs of particular farms and as we cannot verify the photographs we hold in relation to complaints, the health and safety of farms would not be at risk.

Section 40 Personal Information, has been upheld and details of the application explained within our response to you in ATIC1896 issued on 10 March 2020. This is for the information related to photos held from third parties, in connection with our inspections.

It is a shocking admission that APHA "do not hold any photographs taken during inspections". Are they too busy having a cup of tea with their salmon farming buddies to bother to properly inspect for welfare abuse? If APHA was serious about prosecuting companies for breaches of welfare laws it would take video and photographic evidence.

Whatever the reasons for APHA's abject failures to properly inspect salmon farms and police welfare laws (Corin Smith's ['An Autopsy Of An All Clear'](#) is illuminating in that regard), Scottish Salmon Watch asks the Information Commissioner to overturn APHA's FOI refusal.

It is not APHA's job to "verify the photos" from third parties. Surely it is APHA's job to get their hands dirty and take photographs and video footage of welfare abuse on salmon farms themselves (as Scottish Salmon Watch and others have done)?

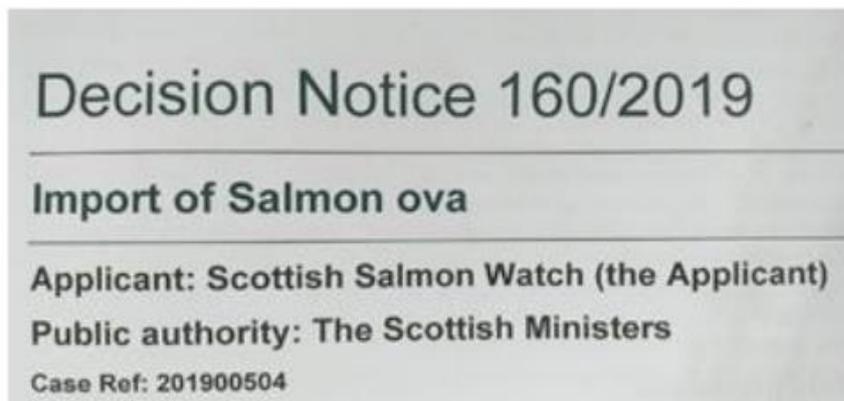


As Scottish Salmon Watch's [FOI review request re. ATIC1896 filed with APHA earlier today](#) stated:

"APHA's non-disclosure is out of kilter with other government agencies such as the Scottish Government which [despite legal threats and lobbying from salmon farming companies has repeatedly disclosed damning photographs of diseased salmon](#).

A [landmark ruling by the Scottish Information Commissioner in November 2019](#) adds weight to Scottish Salmon Watch's view that commercial confidentiality is trumped by the public's right to know.

"In all the circumstances, the Commissioner cannot accept that disclosure of the withheld information in this case would have the effect suggested by the Ministers i.e. that disclosure would, or would be likely to, prejudice substantially the confidentiality of commercial or industrial information where such confidentiality is provided for by law to protect a legitimate economic interest," [stated the Scottish Information Commissioner Decision Notice 160/2019](#) (another version with Scottish Salmon Watch named as the Applicant is [available online here](#)).



Similarly, Scottish Salmon Watch is ready to challenge APHA's unreasonable support for 'commercial confidentiality' via an appeal to the Information Commissioner. We can only hope that APHA sees sense and reverses the refusal to disclose information via a review of ATIC1896."

Please acknowledge receipt of this appeal of APHA's ATIC1836. If the Information Commissioner has any questions concerning this FOI appeal please do not hesitate to contact me on 07771 541826.

Yours sincerely,

Don Staniford

Director, [Scottish Salmon Watch](#)